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## NOTICE OF ALLOWANCE AND FEE(S) DUE

7590

10/01/2009

MATTHEW A. NEWBOLES  
STETINA BRUNDA GARRED & BRUCKER  
Suite 250  
75 Enterprise  
Aliso Viejo, CA 92656

EXAMINER

RANGREJ, SHEETAL

ART UNIT

PAPER NUMBER

3686

DATE MAILED: 10/01/2009

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,640	07/08/2003	Richard Merkin	MERKN-001A	1420

TITLE OF INVENTION: HEALTH CARE ADMINISTRATION METHOD

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$755	\$300	\$0	\$1055	01/04/2010

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS** FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

## HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

# **PART B - FEE(S) TRANSMITTAL**

**Complete and send this form, together with applicable fee(s), to:** Mail **Mail Stop ISSUE FEE**  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, Virginia 22313-1450**  
 or Fax **(571)-273-2885**

**INSTRUCTIONS:** This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

7590 10/01/2009

**MATTHEW A. NEWBOLES**  
**STETINA BRUNDA GARRED & BRUCKER**  
 Suite 250  
 75 Enterprise  
 Aliso Viejo, CA 92656

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,640	07/08/2003	Richard Merkin	MERKN-001A	1420
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nonprovisional	YES	\$755	\$300	\$0	\$1055	01/04/2010
EXAMINER		ART UNIT	CLASS-SUBCLASS			
RANGREI, SHEETAL		3686	705-002000			

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.  
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a **Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 \_\_\_\_\_  
 (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 \_\_\_\_\_  
 3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY AND STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee  
☐ Publication Fee (No small entity discount permitted)  
☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.  
☐ Payment by credit card. Form PTO-2038 is attached.  
☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. **Change in Entity Status** (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Typed or printed name \_\_\_\_\_ Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.**

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10/615,640

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EXAMINER

RANGREJ, SHEETAL

ART UNIT

PAPER NUMBER

3686

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## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 876 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 876 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

# Notice of Allowability

## Application No.

10/615,640

## Examiner

SHEETAL R. RANGREJ

## Applicant(s)

MERKIN, RICHARD

## Art Unit

3686

### - The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 06/17/2009.
2. ☒ The allowed claim(s) is/are 1,3-7,11,14,16-20,26,28-33 and 35-37.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

### THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_.

## **DETAILED ACTION**

### ***Prosecution History Summary***

1. Claims 2, 8-10, 12-13, 15, 21-25, 27, and 34 are cancelled.
2. Claims 1, 3-7, 11, 14, 16-20, 26, 28-33, and 35-37 are allowed.

### ***Continued Examination Under 37 CFR 1.114***

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/17/2009 has been entered.

### ***Terminal Disclaimer***

4. The terminal disclaimer filed on 09/16/2009 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of patent no. 7,464,041 has been reviewed and is accepted. The terminal disclaimer has been recorded.

## **EXAMINER'S AMENDMENT**

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

### ***In the Claims***

6. Claim 1, step (i): --(-- inserted after --step-- in lines 1 & 4.

7. Claim 26: --claim 20-- inserted in place of --claim 24--.

*Reasons for Allowance*

8. The prior arts of record neither anticipate nor fairly and reasonably teaches a method for administering health care to patients within a patient population such that utilization of health care resources available to care for said patients within said patient population are conserved, the method comprising the steps:

a) generating said patient population, said generation of said patient population comprising the steps:

- i) receiving a request from an individual to become a patient within said patient population;
- ii) obtaining information from said individual in step (i), wherein said information is obtained by an in-person interview wherein said information comprises demographic information, related to said individual comprising the individual's age, sex, medical history, and geographic vicinity pertaining to said individual's residence as well as the number of emergency room visits, number of hospitalizations and readmissions, patient pharmacy records, and medication compliance;
- iii) evaluating said data submitted in step (ii), via a computer capable of interpreting said electronic medical records;
- iv) enrolling said individual as a patient within said patient population; and
- v) repeating steps (i) - (iv) for a multiplicity of individuals;

- b) receiving a request from a patient within said patient population generated in step a) for medical services;
- c) assessing said request made in step b) and determining whether said request substantiates a specified clinical event, wherein said assessment is made by a primary care physician;
- d) electronically submitting only a single CPT code corresponding to a single, specified medical service to be rendered in response to the clinical event specified in step (c), via a data communications network;
- e) evaluating the single code submitted in step (d) for clinical and financial appropriateness, wherein said evaluation is performed by a hospitalist or case manager that is other than the primary care physician and wherein evaluating the single code submitted in step (d) comprises (i) evaluating the effectiveness or clinical importance of the service required to be rendered in relation to the code, (ii) evaluating whether the submitted code is applicable to those health care services that are covered by the patient's health care, and (iii) evaluating whether the code is susceptible to duplicative and/or unbundled billing practice or otherwise provides any financial interest to the primary care physician;
- f) electronically responding to said submission made in step (d) based upon said evaluation made in step (e), said response comprising either approval or disapproval of the services to be rendered in relation to said code submitted in step (d) via data communications network;

g) assessing said request made in step (b) and determining whether said request substantiates the utilization of either in-patient services, out-patient services, referral to a specialist, or a combination thereof, wherein the assessment is made by a primary care physician and the in-patient services, out-patient services and services from the specialist are to be performed by a physician other than a primary care physician;

h) electronically submitting *only* a single CPT code corresponding to a single, specified medical service to be rendered in response to the utilization requested in step (g) via a data communications network;

i) evaluating the single code submitted in step (h) for clinical and financial appropriateness, wherein said evaluation is performed by a hospitalist or case manager that is other than the primary care physician and wherein evaluating the single code submitted in step (h) comprises (i) evaluating the effectiveness or clinical importance of the service required to be rendered in relation to the code, (ii) evaluating whether the submitted code is applicable to those health care services that are covered by the patient's health care, and (iii) evaluating whether the --submitted-- code is susceptible to duplicative and/or unbundled billing practice or otherwise provides any financial interest to the primary care physician;

j) electronically responding to said submission made in step (h) based upon said evaluation made in step (i), said response comprising either approval or disapproval of the services to be rendered in relation to said code submitted in step (h) via data communications network;



k) when the patient has a chronic condition, repeating steps (g)-(j) to continuously access the utilization of the in-patient services, out-patient services, and services of the specialist to provide treatment of the chronic condition.

9. The most remarkable prior art of record is as follows:

-Bond et al. (U.S. Patent No. 6,177,940)

-Provost et al. (U.S. Patent No. 6,341,265)

-Summerell et al. (U.S. Patent No. 5,937,387)

-Wiggins (U.S. Patent No. 7,016,856)

-Finn (U.S. Publication No. 2002/0120466)

10. The following is a statement of reasons for the allowance:

The primary reason that claims 1, 3-7, 11, 14, 16-20, 26-33, and 35-37 distinguish over the prior art is the inclusion of the limitations in all of the claims, that is not found in the prior art, of assessing patient request by a primary care physician, electronically submitting *only* a single CPT code corresponding to a single, specified medical service to be rendered in response to the clinical event and CPT code evaluated by a hospitalist or case manager, wherein evaluating the single code submitted comprises (i) the effectiveness or clinical importance of the service required to be rendered, (ii) whether the code is applicable to services that are covered by the patient's health care, and (iii) whether the code is susceptible to duplicative and/or unbundled billing practice or otherwise provides any financial interest to the primary care physician, and then rendering the requested services based on the response of either approval or disapproval; furthermore, repeating the steps to submit codes for utilization of either in-patient services, out-patient services, referral to a specialist, or a combination thereof,

wherein the assessment is made by a primary care physician, but the services are performed by a physician other than a primary care physician, and finally when the patient has a chronic condition, repeating the steps to provide treatment of the chronic condition. The closes prior arts (Bond et al. U.S. Patent No. 6,177,940, Peterson et al. U.S. Patent No. 6,343,271, and Finn U.S. Publication No. 2002/0120466) teaches evaluating the single CPT code relating to a medical service by a remote server, wherein evaluation is to determine whether the claim may be automatically adjudicated or manually, furthermore, patient's social security is submitted and evaluation is based of the benefits summary to decide if the patient is eligible for the services and providing treatment and THEN submitting the claim for pre-checking of auto adjudication; Furthermore, submitting codes for utilization of either in-patient services, out-patient services, referral to a specialist, or a combination thereof, wherein the assessment and the submission of codes is done by a physician other than a primary care physician (Finn). However, Bond, Peterson, and Finn, both individually or in combination fail to teach, "evaluating the single code submitted comprises (i) the effectiveness or clinical importance of the service required to be rendered, (ii) whether the code is applicable to services that are covered by the patient's health care, and (iii) whether the code is susceptible to duplicative and/or unbundled billing practice or otherwise provides any financial interest to the primary care physician; responding to said submission based upon said evaluation comprising either approval or disapproval to proceed with rendering the requested service; assessing said request and determining whether said request substantiates the utilization of either in-patient services, out-patient services, referral to a specialist, or a combination thereof, wherein said assessment is made by a primary care physician and the in-patient services, out-patient services, and services from a specialist are to

be performed by a physician other than the primary care physician; and when the patient has a chronic condition, repeating steps of submitting codes, to continuously assess the utilization of the in-patient services, out-patient services, and services from a specialist to provide treatment of the chronic condition.

11. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHEETAL R. RANGREJ whose telephone number is (571) 270-1368. The examiner can normally be reached on M-F 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/S. R. R./  
Examiner, Art Unit 3686  
September 22, 2009

/Gerald J. O'Connor/  
Supervisory Patent Examiner  
Group Art Unit 3686